



California Fair Political Practices Commission

January 19, 1988

Alan R. Burns
City Attorney
City of Fountain Valley
10200 Slater Avenue
Fountain Valley, California 92708

Re: Your Request for Advice
Our File No. A-87-307

Dear Mr. Burns:

You have requested advice on behalf of temporary mayor George B. Scott about application of the Political Reform Act (the "Act") to Mayor Scott's duties on the City Council.^{1/}

QUESTION

A regional hospital wants to buy casualty and property insurance. An insurance broker has offered to pay Mayor Scott a finder's fee for introducing the broker to hospital administrators.

If the insurance broker pays Mayor Scott a finder's fee, is the hospital a source of commission income to Mayor Scott which might require Mayor Scott's disqualification from decisions affecting the hospital?

CONCLUSION

Even if the insurance broker paid Mayor Scott a finder's fee, the hospital would not be a source of commission income to Mayor Scott because he did not provide professional services to the hospital. He would not be disqualified from voting on matters affecting the hospital.

FACTS

George B. Scott is the temporary mayor of the City of Fountain Valley. He also is an independent insurance agent.

Fountain Valley Regional Hospital is selecting a property and casualty insurer through a competitive bidding process. A

^{1/} The Act is found at Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated.

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local insurance broker verbally has offered to pay Mayor Scott a finder's fee if Mayor Scott introduces the broker to hospital personnel. Payment of the finder's fee is contingent on the hospital buying the insurance from the broker.

ANALYSIS

Mayor Scott is a public official who is disqualified from making, participating in making or attempting to use his official position to influence a governmental decision in which he has a financial interest. (Section 87100.) A person who promises to pay or pays Mayor Scott at least \$250 within 12 months of that person's appearance before the city council is a source of income to Mayor Scott. (Section 87103(c).) The mayor would be disqualified from participating in a decision affecting that person. (Regulation 18702.1(a)(1), copy enclosed.)

A person purchasing an insurance policy is considered a source of commission income to an insurance agent if the agent receives payments "as a result of services rendered as a broker, agent, or other salesperson for a specific sale or similar transaction." (Regulation 18704.3(c)(1), copy enclosed.)

Disqualification Because of a Source of Income

Mayor Scott is an independent insurance agent. Another insurance broker has promised to pay Mayor Scott a finder's fee just for introducing the broker to certain hospital administrators.

We have not addressed this exact issue before. However, the present situation is similar to that of a real estate broker who puts a seller's listing on the multiple listing service. The seller's broker has contact only with the buyer's agent when he negotiates the terms of the sale. Under Regulation 18704.3(c)(2), neither the buyer nor the buyer's agent is a source of income to the seller's broker -- only the seller is a source of income.

Correspondingly, Fountain Valley Regional Hospital's position would be similar to that of the buyer. Moreover, in making the introduction Mayor Scott would not be representing the hospital nor would Mayor Scott be providing professional services to the hospital. The broker would pay a finder's fee

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to Mayor Scott. The broker would be a source of income to Mayor Scott, but the hospital would not be a source of income to him. Consequently, even if the broker paid Mayor Scott a finder's fee of \$250 or more, Mayor Scott would not be disqualified from voting on matters affecting the hospital.

Disclosure of a Source of Income

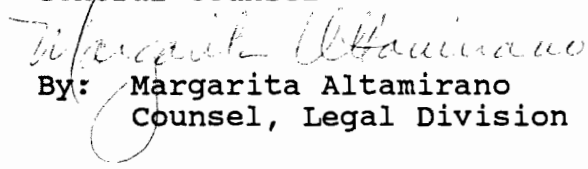
In your letter, you requested advice only about Mayor Scott's disqualification duties. Nevertheless, you should know that the rules for disqualification differ from those for disclosing sources of income.

If Mayor Scott owns 100 percent of his insurance agency business and the insurance broker pays him a finder's fee of \$250 to \$9,999, Mayor Scott would report his own business as a source of income on Schedule "D". (Section 87207(a)(1).) But if the other insurance broker were a source of income of \$10,000 or more, Mayor Scott also would report the insurance broker as a source of income to his insurance agency business on Schedule "H". (Section 87207(b).)

I hope we have answered your advice request. Please call me at (916) 322-5901 if you have questions about this letter.

Sincerely,

Diane M. Griffiths
General Counsel


By: Margarita Altamirano
Counsel, Legal Division

DMG:MA:jaj



CITY OF FOUNTAIN VALLEY

CITY HALL 10200 SLATER AVENUE FOUNTAIN VALLEY, CALIFORNIA 92708

December 8, 1987

Fair Political Practices Commission
P. O. Box 807
Sacramento, CA 95814
Attn: Diane Griffiths, Esq.

RE: Opinion request pursuant to Government
Code Section 83114(b)

Dear Ms. Griffiths:

Request is hereby made for an opinion pursuant to Government Code Section 83114(b). This request is being made on behalf of Mayor Pro Tem George B. Scott, who has authorized me to make it.

Fountain Valley Regional Hospital is conducting a competitive bidding process to select a property and casualty insurer. Mayor Pro Tem Scott is an independent insurance agent. He has related to me that he might get a "finder's fee" if another insurance broker is successful in writing the insurance for the Fountain Valley Hospital. Mr. Scott would receive the finder's fee from the other broker. The only services that Mr. Scott would perform in this process would be to introduce the broker to the hospital personnel.

The specific question that Mr. Scott asks is if he receives a finder's fee of \$250 or more from the broker who obtains the insurance business from the hospital, would he then be disqualified from voting on hospital matters that might come before the City Council?

Your advice and assistance in this matter is appreciated. Although a hospital matter is not now pending before the City Council, there is the possibility that an appeal of a Planning Commission decision could be made and heard before the City Council within twenty days, so your prompt response would be most welcome.

If I can provide any further information on this matter, please feel free to call.

Very truly yours,

Alan R. Burns
City Attorney

ARB:bjs
CC: Mayor Pro Tem George B. Scott



87-307

CITY OF FOUNTAIN VALLEY

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December 8, 1987

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P. O. Box 807
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Very truly yours,

Alan R. Burns
City Attorney

ARB:bjs
CC: Mayor Pro Tem George B. Scott



California Fair Political Practices Commission

December 10, 1987

Alan R. Burns
City Attorney
City Hall
10200 Slater Avenue
Fountain Valley, CA 92708

Re: 87-307

Dear Mr. Burns:

Your letter requesting advice under the Political Reform Act was received on December 10, 1987 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Margarita Altamirano, an attorney in the Legal Division, directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days if your request seeks formal written advice. If more information is needed, the person assigned to prepare a response to your request will contact you shortly to advise you as to information needed. If your request is for informal assistance, we will answer it as quickly as we can. (See Commission Regulation 18329 (2 Cal. Adm. Code Sec. 18329).)

You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

Diane M. Griffiths
Diane M. Griffiths
General Counsel *by K&L*

DMG:plh

cc: Mayor Pro Tem George B. Scott